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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 JAVIER MARTINEZ,

9 Petitioner,

10 v.

11 LOWELL CLARK, et al.,

12 Respondents.

C20-780 TSZ

MINUTE ORDER

13 The following Minute Order is made by direction of the Court, the Honorable
14 Thomas S. Zilly, United States District Judge:

15 (1) Petitioner Javier Martinez’s Motion for Reconsideration (“Motion”), docket
16 no. 18, is DENIED. Petitioner is correct that 28 U.S.C. § 1915(b) does not apply. *See*
17 *Agyeman v. INS*, 296 F.3d 871, 885–86 (9th Cir. 2002). In moving for reconsideration,
18 however, Petitioner still fails to comply with the applicable requirements because he has
19 not submitted *an affidavit* stating the nature of the appeal and his belief that he is entitled
20 to redress. *See* 28 U.S.C. § 1915(a)(1); Fed. R. App. P. 24(a)(1). While these
21 requirements may seem technical, Petitioner’s, or his counsel’s, lack of reasonable care in
22 moving to proceed on appeal *in forma pauperis* demonstrates that reconsideration is not
23 warranted in this case. *See* LCR 7(h). That is, there has been no “showing of manifest
error in the prior ruling or a showing of new facts or legal authority which could not have
been brought to [the Court’s] attention earlier without reasonable diligence.” *Id.*

Nor is the Court persuaded that it manifestly erred in certifying that this appeal “is
not taken in good faith,” 28 U.S.C. § 1915(a)(3), as there is still little indication that
Petitioner will present non-frivolous claims on appeal. *See Knapp v. Hogan*, 738 F.3d
1106, 1110 (9th Cir. 2013) (explaining that “lack of ‘good faith’ in this context has been
held to be equivalent to a finding of frivolity”). The Court has reviewed the four issues
that Petitioner intends to raise on appeal, and his cited case law. *See* Motion (docket

1 no. 18 at 2). Nevertheless, it has not identified any authority that lends support to
2 Petitioner’s arguments that the agency gave mere “lip service” to the applicable
3 evidentiary standard; erred in making a dangerousness finding based on the serious nature
4 of Petitioner’s convictions; or violated Petitioner’s due process rights by failing to
5 consider alternatives, or by overlooking or misrepresenting the record. *See* Report and
6 Recommendation (docket no. 8 at 10–16); Order (docket no. 12 at 3–4).

7 (2) The Clerk is directed to send a copy of this Minute Order to all counsel of
8 record and to the United States Court of Appeals for the Ninth Circuit.

9 Dated this 5th day of February, 2021.

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William M. McCool
Clerk

s/Gail Glass
Deputy Clerk